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Regulatory Analysis and Regulatory Flexibility Analysis

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Part 365, Part 368, and Part 385 Proposals Mexican Carrier Provisions

Federal Motor Carrier Safety Administration
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Introduction

Under the provisions of the North American Free Trade Agreement (NAFTA), signed in December 1992, Mexican motor carriers were to be gradually allowed to increase their operating range in the United States. The United States government, concerned over the safety of Mexican trucks and buses, delayed implementing the provisions of NAFTA that would have increased the allowable driving range for these vehicles. At the same time, the Department of Transportation began working on programs and procedures to allow the US to ensure the safety of Mexican commercial motor vehicles (CMVs) when they were eventually allowed further into the United States. In early February 2001, a tribunal established under the dispute resolution procedures outlined in NAFTA found that the US action violated the terms of NAFTA.

The Department of Transportation is issuing the three attached Notices of Proposed Rulemakings (NPRMs) related to NAFTA and procedures for CMVs owned and operated by motor carriers domiciled in Mexico. One NPRM, Application by Certain Mexican Motor Carriers to Operate Beyond U.S. Municipalities and Commercial Zones on the U.S.-Mexico Border, referred to herein as the Part 365 NPRM, proposes revising the OP-1(MX) form to include information from the current OP-1(MX) and the OP-1(P) (which would be discontinued for Mexican carriers). In addition, Mexican carriers applying for OP-1(MX) authority will have to complete the BOC-3 and MCS-150 forms. The second NPRM, Revision of Regulations and Application Form for Mexican-Domiciled Motor Carriers to Operate in U.S. Municipalities and Commercial Zones on the U.S.-Mexico Border, referred to herein as the Part 368 NPRM, proposes revising Form OP-2, which is currently used by Mexican motor carriers to obtain authority to operate within the US municipalities and commercial zones adjacent to Mexico in the four border States. The third proposal, Safety Monitoring System and Compliance Initiative for Mexican Motor Carriers Operating in the United States, herein called the Part 385 proposal, outlines a proposed system to monitor the safety of Mexican based motor carriers.

This regulatory evaluation analyzes all three of these proposals. To the extent possible, the costs and benefits of the different proposals are disentangled, and results are summarized for each proposal. This document does not evaluate free trade with Mexico, NAFTA, or the impact of opening the border to additional Mexican trucks and buses. There are a number of analyses of various aspects of US Mexican trade, but these are beyond the scope of this evaluation. This evaluation focuses on the Federal Motor Carrier Safety Administration's (FMCSA) estimates of the costs and benefits of the NPRMs mentioned above. Accordingly, issues such as the environmental or balance of payments impacts of open borders are not discussed in this analysis.

Background

The Bus Regulatory Reform Act of 1982 limits most Mexican CMVs operating in the United States to commercial zones in the States of California, Arizona, New Mexico, and Texas. These commercial zones are generally areas from three to 20 miles north of US

border cities. No physical boundaries separate the commercial zones from the remainder of these States.

Mexican carriers wishing to operate within the U.S. municipalities and commercial zones along the U.S.-Mexican border must obtain operating authority from the FMCSA, which they receive by filing a form OP-2. Mexican carriers operating in the border commercial zones are subject to US safety and insurance regulations.

NAFTA, which was signed in 1992 and approved by Congress in 1993, provided for the gradual relaxation of restrictions between the three signatory countries, the United States, Canada, and Mexico. Immediately upon taking effect, NAFTA allowed Mexican bus companies to apply for authority to conduct cross border charter and tour bus operations to all points in the United States. Property carriers were to be allowed to apply for authority to deliver goods from Mexico to the four border States (and to take backhauls to Mexico) beginning on December 17, 1995. On January 1, 1997, Mexican bus companies were to be allowed to apply for authority to engage in regular route passenger operations between Mexico and all points in the United States. On January 1, 2000, Mexican property carriers were to be allowed to apply for authority to deliver goods from Mexico to all points in the United States (but not point to point carriage of domestic goods in the United States). Finally, on January 1, 2001, Mexican bus companies were to be allowed to file applications to provide point to point bus service in the United States.

Immediately upon NAFTA's taking effect, the former Interstate Commerce Commission (ICC) began processing applications from Mexican bus companies to conduct charter and tour bus operations in the United States. Applicants submitted the form OP-1(P). On December 18, 1995, the DOT announced that it would delay implementing the additional access provisions, because of concern about the safety of Mexican motor carriers. Because of the delay in implementing these provisions, no Mexican motor carriers currently have OP-1(MX) authority. (A small number of Mexican carriers have OP-1 authority, which was granted before the moratorium was imposed). A number of carriers submitted these forms to the DOT, but many of these carriers withdrew their submissions when it became clear that the DOT would not issue the four State border authority. Some of these carriers subsequently applied for commercial zone (OP-2) authority, and others withdrew their applications entirely. Approximately 190 Mexican motor carriers currently have OP-1(MX) forms pending with the DOT.

Approximately 12 Mexican charter and tour bus companies received OP-1(P) authority. Mexican carriers that operate within the U.S. municipalities and commercial zones along the U.S.-Mexico border must file form OP-2. The current version of the OP-2 forms asks detailed questions about the carriers operations, location, and equipment, and the FMCSA estimates that it takes approximately two hours for a carrier to complete (OMB Approval No. 2126-0019). Approximately 10,100 active Mexican carriers currently have OP-2 authority.

The ICC also developed an OP-1(MX) form, for Mexican carriers to apply for authority to operate in the four border States. This form is similar to the OP form long used by the

former ICC for domestic for-hire carriers. While a number of Mexican carriers submitted these forms, they were not processed by the DOT, pending the outcome of the delay in implementing NAFTA. The OP-1(MX) is similar to the OP-2 form, and also takes two hours to complete (OMB Approval No. 2126-0016).

Even without the broader border opening envisioned by NAFTA, trade between the US and Mexico has skyrocketed the last few years. Along with the growth in trade has come an increase in truck traffic crossing the border. According to the Federal Reserve Board of Dallas, trade with Mexico reached $196.6 billion in 1999, up more than 141 percent from 1993. The growth in trade appears to have accelerated in 2000, according to data from the Bureau of Economic Analysis reported by Economic Data Resources. Northbound truck crossings have grown almost 90 percent from fiscal year (FY) 1993 to FY 2000, rising from 2.4 million to 4.55 million crossings.

The growth in trade and traffic has been accompanied by increasing concern about the safety of Mexican motor carriers operating in the United States. Several government reports indicate that many Mexican motor carriers are operating outside the commercial zone, and that they have a higher out-of-service (OOS) rate than domestic carriers. The DOT's Office of the Inspector General (IG) issued a report in November 1999 detailing safety and operational problems with Mexican motor carriers and the Department's oversight of these carriers. The IG found that 41 percent of 24,000 Mexican vehicles inspected at the border or in the commercial zones in FY 1998 were placed OOS. The IG also estimated that approximately 130 Mexican motor carriers may be operating illegally outside the border States, and another 505 in the border States but outside the commercial zones. The General Accounting Office (GAO) noted in 1997 that Mexican trucks inspected at the border had an average monthly OOS rate of 45 percent between January and December of 1996, compared to a 28 percent rate for domestic carriers during fiscal year 1995.

A review of more recent DOT data indicates that Mexican motor carriers continue to have a higher OOS rate than their domestic counterparts. Some explanation is needed before presenting these data. These data are based on carriers the FMCSA believes to be Mexican-domiciled. Some carriers have filed the requisite forms (OP-1(MX) or OP-2) for operating authority, while others have US DOT numbers but no operating authority. The DOT IG report noted this discrepancy in its report. The data in this chapter represent the DOT's best guess of the number of Mexican domiciled carriers who may have operated in the United States over the last few years. Because this chapter deals with the historical crash and inspection record of Mexican motor carriers, it is important to count all these carriers, whether or not they are still operating in the United States. Later chapters, which discuss the anticipated consequences of the proposals, will include other figures to better reflect the number of Mexican carriers currently operating in the United States.

The FMCSA's Office of Data Analysis and Information Systems developed a file of Mexican carriers that have recently operated in the United States. It includes Mexican carriers with operating authority, carriers who have a DOT number but no authority,

carriers with both a DOT number and operating authority, and other carriers with neither operating authority nor a DOT number which the Agency believes are operating in the United States. These latter carriers are those who have been subject to a roadside inspection in the United States at some point in the last three years. As of January 2001, this file contained 11,787 Mexican motor carriers. By way of comparison, there are over 500,000 carriers registered on the FMCSA's Motor Carrier Management Information System (MCMIS).

Table 1 shows that both the number of truck crossings and the number of inspections have increased over the last several years. While the number of inspections has increased at a faster rate than crossings, inspections equals only a small percentage of the total Mexican trucks crossing the border. In 1997, about ¾ of one percent of Mexican trucks were inspected, while 1 percent were inspected in 1998. Assuming that truck crossings continued to grow at the historical rate of 10 percent, the 57,000 inspections conducted in 2000 would translate into 1.2 percent of trucks crossing.

While this figure is quite low, it is important to note that many trucks cross the border multiple times, so that four million annual crossings translates into many fewer trucks. Many drayage trucks simply haul trailers from one side of the border to a transshipment point on the other side. These vehicles may cross the border one or more times a day. The 1 percent of vehicles crossing inspected translates into a much higher percentage of border trucks inspected. A preliminary FMCSA analysis, based on estimates from three different data sources and methodologies, estimates that approximately 80,000 Mexican trucks operate in the border region. The MCMIS inspection file shows that almost 34,000 distinct Mexican trucks were inspected in 2000, 43 percent of the 80,000 that operate in the border area.

Table 1

Inspections and Crossings

	1997	1998	1999	2000	Total	Average
MX Trucks Insp, Border		27,525	44,098	57,108	128,731	42,910
MX Carriers Insp, Border		3,597	4,382	4,302	12,281	4,094
Trucks Insp per Carrier		8	10	13	10	10
Border Crossings, millions	3.481	3.900	4.267		11.648	3.883

Table two shows that Mexican carriers have a higher out of service rate than their US counterparts. Between 1998 and 2000, Mexican trucks had an average OOS rate of 42.3 percent, 13.2 percent higher than the rate for US trucks. However, inspection data suggests that Mexican carriers are improving, as both the driver and vehicle OOS rates have fallen steadily over the three years. The driver OOS rate fell by 30 percent, and the vehicle rate was down by 12 percent. For US carriers, there was no real change in the

driver rate and a 6.5 percent fall in the vehicle rate. Because of the more rapid improvement in Mexican OOS rates, the gap between the total OOS rates has fallen from 16.3 percent in 1998 to 11.4 percent in 2000. These numbers are different than those reported by the GAO because of the different time period covered, and to the FMCSA's more expansive definition of Mexican carriers.

Table 2

OOS Rates, 1998-2000

	1998	1999	2000	Average
Mexican Driver OOS	9.2%	7.6%	6.4%	7.5%
Mexican Vehicle OOS	41.6%	38.8%	36.4%	38.5%
Mexican Total OOS	46.2%	42.7%	39.8%	42.3%
US Driver OOS	7.1%	7.3%	7.2%	7.2%
US Vehicle OOS	25.1%	24.0%	23.5%	24.2%
US Total OOS	29.9%	29.0%	28.4%	29.1%

The vast majority of these inspections take place in the four border States. Some Mexican carriers are allowed to operate outside the border areas, as explained above, and we were not able to readily differentiate those operating outside their authorized area. Therefore, we did not attempt to estimate the number of Mexican carriers operating beyond their authorized areas.

Texas alone accounted for over 60 percent of the inspections in 2000, up from 48 percent in 1998. Texas also consistently places the highest percentage of vehicles and drivers out of service.

While the Mexican OOS rate is fairly high, these vehicles do not appear to be involved in a large number of crashes. According to the MCMIS crash file, between 1997 and 1999 an average of 113 crashes occurred in which Mexican CMVs were involved. This included 2 fatal crashes, 65 injury crashes, and 46 tow-away crashes. Over 80 percent of these crashes took place in Texas. A review of crash records from the Texas Department of Public Safety (DPS) suggests that many crashes do not make it to MCMIS. Texas DPS data indicate that slightly more than twice as many crashes are on their records as on MCMIS. Accordingly, we multiplied the 113 crashes from MCMIS by 2.02 to account for underreporting. Table three reports our estimate of the average number of crashes with Mexican trucks and buses. Totals may not add because of rounding.

Table 3

Adjusted Number of Crashes with Mexican Vehicle Involvement

	1997	1998	1999	Average
Fatal	6	4	0	3
Injury	214	85	93	130

Tow-Away	77	93	111	94
Total	297	182	204	228

Proposals

As discussed above, the FMCSA is publishing three separate NPRMs. This section briefly summarizes the provisions of the NPRMs. For a fuller exposition, readers are advised to consult the NPRMs directly.

The Part 365 proposal includes a number of changes to the OP-1(MX) form. In addition to revising the OP-1(MX), this NPRM proposes other changes in the procedure required for Mexican carriers to obtain a certificate of authority. A description of the proposed changes follows.

1) The OP-1(MX) will include additional questions about motor carriers' safety record and compliance with applicable safety requirements. Carriers would have to demonstrate knowledge of the FMCSRs and specifically certify that they were in compliance with the applicable FMCSRs.
2) Applicants would also be required to provide a narrative explanation of their management plan to ensure safety compliance.
3) In addition to filing the OP-1(MX) form, applicants will also need to submit both the MCS-150 and the BOC-3 forms
4) Carriers will be required to update the OP-1(MX) when they change contact-related information, such as their name, addressees, or agents for service of process. Carriers with no change would not need to refile, but changes would have to be reported within 45 days.
5) Carriers that have previously filed an OP-1(MX) will be required to refile the new form.
6) International charter and tour bus operators who currently file the OP-1(P) will be required to file the OP-1(MX) instead. Other Mexican passenger carriers who seek to operate in the United States under NAFTA provisions, will also have to file the OP-1(MX).
7) Applicants must be registered with the Mexican Governments Secretaria de Communicaciones y Transportes (SCT).

The Part 368 NPRM proposes changes to the OP-2 form. This form, as noted above, is filed by Mexican motor carriers wishing to operate in the U.S. municipalities and commercial zones adjacent to Mexico in the four border States. Many of the changes would match those proposed for the OP-1(MX). The changes are described below.

1) The OP-2 will include additional questions about motor carriers' safety records and compliance with applicable safety requirements. Carriers would have to demonstrate knowledge of the FMCSRs and specifically certify that they were in compliance with the applicable FMCSRs.
2) Applicants would also be required to provide a narrative explanation of their management plan to ensure safety compliance.

3) In addition to filing the OP-2 form, applicants will also have to submit both the MCS-150 and the BOC-3 forms.
4) Carriers will be required to update the OP-2 when they change contact-related information, such as their name, addressees, or agents for service of process. Carriers with no change would not need to refile, but changes would have to be reported within 45 days.
5) Carriers that have previously filed an OP-2 will be required to refile the new form.
6) Applicants must be registered with the Mexican Governments Secretaria de Communicaciones y Transportes (SCT).

It is unclear whether many Mexican motor carriers would continue to file for OP-2 authority, since there is no additional cost or effort required to obtain authority to operate throughout the United States. Nonetheless, the OP-2 form will be continued for those carriers who wish to limit their operations to the commercial zone.

The Part 385 proposal is the most complex of the three proposals analyzed. The proposal details a safety fitness oversight program intended to ensure that Mexican carriers operating in the United States continue to comply with the FMCSRs and operate safely. Under the proposal, Mexican carriers operating in the United States must have a safety review within 18 months of receiving conditional operating authority. The safety review will be less comprehensive than the FMCSA's compliance reviews, although the specific components of the review have not yet been developed. The reviews may be conducted at the carrier's place of business, at a border crossing, or at an alternative location in the United States. If a review indicates that a specific carrier does not have adequate controls and procedures to ensure its safety, the FMCSA will suspend that carrier's registration. Carriers with suspended registrations would not be allowed to operate in the United States. Suspended carriers would have to submit an improvement plan within a set period. If the FMCSA determines that the improvement plan is sufficient, the Agency will reinstate the carrier's authority. Otherwise, the Agency will conduct a targeted follow-up safety review to assure that the carrier has successfully remedied any problems. Carriers which fail to submit an improvement plan, or which fail the follow-up safety review, will have their registration revoked.

Carriers which, through no fault of their own, do not have a safety review within 18 months, may continue to operate under provisional authority. If the FMCSA determines, through roadside inspections or other means, that a carrier has egregious violations, the FMCSA will either arrange for an expedited safety review, or send the carrier a deficiency letter requiring that corrective action be taken. The "zero-tolerance" violations or actions that will lead to such expedited action are listed below.

1) Use of a driver with no Licensia Federal de Conductor (LCF) or Commercial Drivers License (CDL), or with a CDL or LCF that is false, revoked, expired, or with no Hazardous Materials endorsement when one is required; or
2) returning to the US with a vehicle which has been placed OOS without making the repairs; or

3) having any incidents in the US involving a highway route controlled quantity of
    a. a Class 7 radioactive material, or
    b. a Class 1, Division 1.1, 1.2, or 1.3 explosive, or
    c. a poison inhalation Hazard Zone A or B material; or
4) having any two incidents stemming from a carrier act of commission or omission in the US involving any other HM; or
5) using a driver who tests positive for drugs or alcohol or who refuses to submit to a required test; or
6) operating in the US without the required level of insurance; or
7) an aggregate OOS rate of 50 percent for three inspections during a consecutive 90 day period.

If a carrier does not submit to a safety review or respond to a deficiency letter expeditiously, the FMCSA will suspend the carrier's registration until after completion of the review or submission of a corrective action plan.

The primary goal of these NPRMs is to enhance the FMCSA's ability to assure the safety of Mexican motor carriers operating in the United States. The proposals increase the reporting requirements of Mexican carriers, so that the FMCSA can review their safety record and capabilities before issuing authority to operate in the US. The safety screening process provides the FMCSA with additional information and processes to monitor and enforce the safety of these motor carriers once they are operating in the United States.

Costs and Benefits of the Proposals

No attempt was made to estimate the benefits of each individual proposal, since the three NPRMs are envisioned as a package. It is difficult to calculate a realistic benefit from the improved data we will obtain from the revised OP-1(MX) and OP-2 forms, but it would be impossible to implement the safety monitoring system without the enhanced data from Mexican carriers. Accordingly, the benefits of all three proposals are reported together. Costs, on the other hand, were broken out for each NPRM.

All Mexican carriers who wish to transport property in the United States, whether they currently have operating authority or not, will have to file either an OP-1(MX) or an OP-2 application form. We estimate that it takes four hours to complete each form. Since it takes the same amount of time to complete either form, we did not attempt to provide separate estimates of the number of carriers who would choose to complete either form. As was noted above, the vast majority of Mexican motor carriers currently operating in the United States have OP-2 authority. We estimate that half of these carriers will switch to OP-1(MX) authority, while the other half will continue operating within U.S. municipalities and commercial zones along the U.S. Mexican border pursuant to OP-2 authority. We assume that the new carriers will be more likely than current carriers to apply for OP-2 authority, since most of the large carriers who would presumably benefit from expanded US operations are already operating within U.S. municipalities and commercial zones along the U.S. Mexican border under OP-2 authority. While some

new applicants will also want to take advantage of the opportunity to operate throughout the United States, many will not have the financial and administrative wherewithal to benefit from the enlarged operations allowed. Accordingly, the Agency estimates that three quarters of all new applicants will apply for OP-2 authority, with one quarter requesting OP-1(MX) authority. Nonetheless, changing this value would have no impact on the analysis since the costs of completing the two forms are identical.

The number of carriers subject to the proposals is the sum of those currently holding operating authority and those who apply for authority in the future. Because of uncertainty of the values of both of these variables, we include a range of estimates of Mexican motor carriers. As explained below, we calculated the costs of these proposals based on 5,000, 10,000, and 15,000 Mexican motor carriers.

This report previously referred to a file of 11,787 Mexican carriers who have operated in the United States in recent years. Some reviewers have suggested that many of these carriers no longer operate in the United States. A review of inspection and accident records in 2000 found approximately 4,500 Mexican motor carriers. Approximately 10,000 Mexican carriers currently have operating authority. Therefore, we constructed three different baseline scenarios for the number of Mexican carriers currently operating in the United States, a low (4,500), medium (9,500) and high (11,787) scenario.

The second step in figuring out the total number of Mexican carriers requesting authority is determining how many new carriers will apply for either OP-1(MX) or OP-2 authority under the proposals. Approximately 1,600 Mexican carriers have filed an OP-2 form annually over the last several years (and a similar number have been granted). Only 190 OP-1(MX) applications are pending, as Mexican carriers stopped filing these forms when it became clear that these forms were not being processed. For the high estimate, the Agency assumes that this number will double to 3,200 the first year this proposal is in effect, and then fall to 2,500 applicants per year for the following nine years. For the lower and middle estimates, we estimate that there will be 500 new applicants the first year, and then 200 per year thereafter. Again, we assume that 75 percent of the new applicants will request OP-2 authority, and 25 percent OP-1(MX) authority. This translates into approximately 15,000 applicants in the first year for the high estimate, 10,000 for the medium estimate, and 5,000 for the low estimate. As was noted above, the FMCSA estimates that more than 500,000 motor carriers are currently operating in the United States.

Over ten years, Mexican carriers would spend an average of between 2,700 hours a year for the low estimate, and almost 15,000 hours for the high estimate. For the high estimate, this reflects the average of approximately 60,000 hours for the first year (~ 15,000 x 4) and 10,000 hours for the remaining 9 years (2,500 x 4). We also estimated that one-third of all carriers have to revise their contact information annually (because of a new name, address, or agent for service of process), and that this takes half an hour per update. For the high estimate, this results in just under 2,500 hours annually in the first year (~15,000 x 0.333 x 0.5 hours), and 417 hours (2,500 x 0.333 x 0.5 hours) for later years.

Converting these hours to dollars requires information on wages in Mexican trucking industry, which we do not have. Therefore, we used several data sources to back into an estimate of motor carrier wages. Specifically, data from the World Bank shows that the labor cost per worker in the manufacturing sector in Mexico from 1995 to 1999 was $7,607 per year. The comparable figure for the United States was $28,907. The ratio of these two figures is 0.263, which can be used as a rough approximation of the ratio of Mexican to US wages. According to the US Bureau of Labor Statistics Occupational Employment Survey, the mean wage for managerial and administrative occupations (those most likely to be filling out the forms) in Standard Industrial Code (SIC) 42, which includes trucking companies, was $25.50. Adding 33 percent to that to cover fringe benefits yields a US wage of $33.92. Multiplying that figure by 0.263 results in an average Mexican wage (for those completing the OP-1(MX) and OP-2) of $8.92. The cost to Mexican carriers of completing the forms ranges from $243,000 to $1.34 million per year.

Mexican carriers applying for operating authority for the first time would have to pay a $300 filing fee. Carriers who currently have OP-2 operating authority and refile for OP-2 authority will not have to pay the filing fee; those with OP-2 authority who apply for OP-1(MX) authority will have to pay the filing fee. Carriers who need to update their contact information with the new forms will not be required to pay the filing fee. We estimate that one half of Mexican carriers currently operating in the U.S. will switch from OP-2 to OP-1(MX) authority, and therefore have to pay the filing fee. This is the largest cost to carriers, with first year costs ranging from $825,000 to $2.7 million.

For each applicant, the FMCSA would verify through SCT that the drivers listed have a valid LFC, and that the carrier is registered and authorized to operate up to the US border. The FMCSA assumes that it would cost $20 per request to verify this information. Table four presents more detail on these estimates.

Table 4

Cost of Parts 365 and 368,
Ten Year Costs, Thousands of Dollars

	Low	Medium	High
Carrier Hours, Avg	2,833	4,917	15,620
Carrier Cost	$1,609	$2,538	$10,823
Government Cost	$136	$236	$750
Total Cost	$1,745	$2,774	$11,572

Part 385

Determining the cost for the Part 385 NPRM (the Safety Monitoring System) is much less straightforward. The cost will depend partly on the number of carriers that do not have a satisfactory safety review, how carriers respond to the review, and what measures carriers must undertake to improve their performance.

As explained above, all Mexican carriers applying for authority to operate in the United States must have a safety review within 18 months. Carriers with demonstrable problems, such as using a driver without a CDL, may also receive a deficency letter. Carriers who demonstrate in their safety review an acceptable level of safety, and do not have any additional safety problems during the remainder of the period they are provisional carriers, will then receive permanent operating authority. Carriers who do not pass the safety review will have a limited time to improve their safety controls and procedures. Those carriers which are able to improve their safety operations will receive permanent authority, while those unable to do so will have their authority revoked.

The first step in calculating the costs (and benefits) of this Part is to determine how many carriers would be involved in each step of the process. Table five presents information on the number of carriers and inspections, and the percent with any zero tolerance violations. Data are from inspections between 1998 and 2000.

Table 5

Violations of Mexican Trucks and Buses

Number of MX Carriers	11,787
Number of MX Carriers Inspections	6,147
First 3 insp OOS rate of 100%	7.2%
CDL	0.3%
HM 1	0%
HM 2	0%
Drug or alcohol violation	0%
Returning with unfixed vehicle	0%
Insurance violation	7.5%

6,147 Mexican carriers have been inspected in the last three years. Only two types of zero tolerance violations showed up with any regularity, insurance violations and having a high OOS rate for three or more inspections within 90 days.

The most significant violation found for these zero tolerance violations was failure to have adequate insurance. Over 14 percent of all Mexican carriers with fewer than five inspections did not have adequate insurance, while 7.5 percent of all Mexican carriers inspected lacked coverage. This suggests that carriers which operate in the United States more frequently, and that have greater interaction with the FMCSA and other enforcement agencies, are less likely to have insurance violations. Greater exposure may also lead to a decrease in other violations, although the data are not detailed enough to allow us to test this hypothesis. This is consistent with data on domestic new entrants, which have been shown to experience a drop in violations with additional years of experience (Volpe).

Table five shows the percent of carriers with an OOS rate of 100 percent for their first three inspections within 90 days. This is used as a proxy for the true zero tolerance

violation, which is an OOS rate of 50 percent or higher for three or more inspections within 90 days. We assumed that 14.4 percent of Mexican carriers have an OOS rate of 50 percent or higher, twice as many as those with a 100 percent OOS rate.

Very few HM crashes were reported in the MCMIS file, and it was not always possible to determine precisely what material was involved. FMCSA's HM division reviewed data on the types of HM involved in crashes, and it appears that there were no incidents with Mexican carriers involving the most toxic HM. There were no reports of Mexican carriers with two or more HM incidents on the MCMIS file, and none that we were able to locate on Research and Special Program's Hazardous Materials Information System (HMIS). We were also unable to find on the MCMIS inspection file any examples of several other violations, including drug and alcohol program violations, operating outside of authorized areas, and reentering the United States before fixing vehicle violations from a previous inspection. This is not surprising, since roadside inspections do not generally gather information on these types of violations.

The absence of these violations from the inspection file does not necessarily mean that these violations do not occur; indeed, both the inspector general report and the study submitted by Public Citizen cite instances of these types of zero tolerance violations.

Accordingly, we assume that the first year the safety screen is implemented, 20 percent of all Mexican carriers applying for authority will have a zero tolerance violation and need to have an expedited safety review or else receive a deficiency letter. We assume these carriers will improve in later years, so that in their second year of operation, 15 percent of Mexican carriers will have a zero tolerance violation, and 10 percent will have any of these violations in later years. Furthermore, we forecast that 30 percent of carriers with zero-tolerance violations will fail the initial safety review or submit an inadequate response to the deficiency letter.

Mexican carriers who do not have any zero tolerance violations must have a safety review within 18 months of receiving operating authority. Because of the large volume of safety reviews that must be conducted, and for computational convenience, we assume that half of the new applicants receive a safety review in the year they receive authority, and the other half are reviewed the following year. The Agency assumes that 10 percent of new applicant Mexican carriers with no zero-tolerance violation fail the safety review.

Because all Mexican carriers operating in the United States will have to refile or make an initial filing of either the OP-1(MX) or OP-2 forms, the number of carriers needing safety reviews will also be highest in the early years. For the first year, 20 percent of existing and first year carriers will have zero tolerance violations and require some form of expedited action encompassing a safety review or deficiency letter, while the remaining 80 percent will have to be reviewed within 18 months. Table six shows the number of applicants, reviews and failed reviews for the three scenarios. Data are presented for the first and the last five years.

Table 6

Applicants, Safety Reviews, and Failed Reviews

	Low Estimate		Medium Estimate		High Estimate	
Year	1	5-10	1	5-10	1	5-10
Applicants	5,000	200	10,000	200	14,987	2,500
Saf Review	2,333	270	4,667	270	6,994	3,375
Fail	433	49	867	49	1,299	613

As noted above, while some details remain to be finalized, in general the Agency envisions a safety review as being somewhat less comprehensive than our current compliance reviews. The average compliance review takes four hours, with significant upside variation. Our analysis assumes that the safety review that is ultimately developed will take three hours. We previously calculated that the average wage of safety inspectors, including fringe benefits, is approximately $35 per hour. The wages for non-federal employees who may also conduct safety reviews is likely to be similar. As noted above, wages for employees of Mexican carriers are lower than for their American counterparts. We estimated above that the wages of personnel likely to fill out forms is under $9 per hour. We doubled this figure to $18 for the remainder of this analysis, to take account for extra work that may be required to prepare for a safety review, and because more than one employee may participate in the review.

The total ten-year cost of the safety reviews ranges from $1.6 million for the low estimate to $8.5 million for the high estimate. Discounted costs range from $1.3 million to $6.4 million.

Carriers who fail a safety review will have their registration suspended, and they will be required to submit an improvement plan within a specified time frame. Table six presents our forecast of the number of carriers who will fail safety reviews, for each of the scenarios. We assume that zero-tolerance violators will be suspended for four weeks, and other carriers for only two weeks. We also estimate that it cost $500 per week for a carrier to be suspended from operating in the United States (these carriers may continue to operate in Mexico). We assume that developing and implementing an improvement plan will cost $1,000 per carrier. The actual figure will presumably be much higher for some carriers and significantly lower for others. Finally, we estimate that the FMCSA will need four hours to review each improvement plan.

Table seven shows the ten-year cost of suspending operations, which range from a low of $2.7 million to a high of $14.4 million. Developing improvement plans costs equal 60 percent those of the cost of suspending operations. FMCSA review costs are minimal, ranging from an average of $26,000 per year to $140,000 per year.

Table 7

Cost of Suspension and Improvement Plans
Ten Year Cost, Millions of Dollars

	Low	Medium	High
Suspending Ops	$2.7	$4.8	$14.4
Improvement Plans	$1.6	$2.9	$8.7
Govt Review	$0.26	$0.5	$1.4

According to the NPRM, some carriers may have their authority reinstated after their plan is accepted by the FMCSA. We estimate that half of the carriers who failed the safety review will have their authority reinstated upon review of their improvement plan, and the other 50 percent will require a follow-up review. The number of carriers receiving a follow-up review is fairly small for all three scenarios, equaling half the totals of the bottom row of table 6. For the high estimate, 650 carriers would receive a follow-up review in the first year, with approximately 300 reviews annually in late years. Figures for the two other scenarios are significantly smaller.

The follow-up review will take three hours, the same amount of time estimated for the initial safety review. We estimate that half of the carriers with a zero-tolerance violation will fail the follow-up review and have their authority revoked, while the other half will pass the second review. For carriers without a zero-tolerance violation, the comparable figures are 20 percent and 80 percent. This translates into an average of 33 carrier closures annually for the low estimate and 172 annually for the high estimate.

The cost of the follow-up reviews themselves is fairly modest, since few carriers are reviewed. Table eight shows the costs for all three scenarios. Government costs are more than double industry costs for each scenario, which reflects the ratio of government to Mexican carrier employee wages. The total cost for follow up tests range from about $140,000 to $757,000, with annual costs averaging one tenth these amounts.

Table 8

Costs for Follow Up Tests
Ten-Year Costs, Thousands of Dollars

	Low	Medium	High
Carriers Closed, Avg	33	57	172
Industry Cost, Total	$44	$77	$235
Govt Cost, Total	$98	$171	$522
Total Cost	$142	$248	$757

A much larger category of costs is the costs of revoking the US operating authority of carriers that fail the follow-up review. Determining these costs is extremely difficult. There would be no cost to the overall economy. The carriers with revoked authority represent a small percent of Mexican carriers operating in the United States. Because they constitute such a small percentage of freight shipments, revoking their authority to operate in the US should not have any overall impact on cross-border supply (and therefore prices) in the trucking industry.

We do not anticipate that truck drivers working for these carriers will have any difficulty finding new jobs. The motor carrier industry has argued for several years that they are experiencing a driver shortage (Gallup; Transport Topics). Accordingly, any drivers laid off from carriers with revoked US authority should be able to find new jobs almost immediately. However, some drivers may take longer to find jobs, which would impose costs on them and society (as their potential labor is lost). Similarly, most shippers who use carriers who are no longer allowed to operate in the United States should be able to find alternate carriers relatively expeditiously, although perhaps not immediately.

Owners of these firms will presumably face some costs, with the magnitude of costs depending on the extent to which they focused on US operations. Carriers which largely operated in the US may be forced to close, while other carriers would have to scale back their operations. Costs for either type of carrier may include such things as lost office rent, advertising, and capital investments. Carriers forced to close may have to sell their fleet, or, if they rent vehicles, to escape from their rental contracts, which may require that they pay penalties.

While these may be costs to the carriers that close, most of these are not real social costs. Penalty costs of broken rental agreements represent costs to the carrier but an equal benefit to the rental company. Forcing a carrier to pay this penalty does not change the amount of resources available, it merely redistributes them from carriers to truck leasing companies.

The relevant economic question is whether closing carriers, or scaling back their US operations, imposes real resource costs. Resource costs are costs incurred from using resources in less than optimal tasks, and they are not offset by equivalent gains elsewhere. Real resource costs, such as time spent filling out an application or time when a driver is looking for work, are costs that can not be used for any alternate, more productive, activity. It is likely that this proposal would impose some modest resource costs. The most likely costs are those for trucks which are unused until sold to a new owner, the time it takes some driver to find new jobs, and time for shippers to find new carriers. As argued above, we do not believe any of these costs are major, as there is a fairly efficient market for drivers and used vehicles. Nonetheless, we have conservatively estimated that revoking a carrier's authority to operate in the United States imposes a cost of $10,000 per carrier.

Because few carriers have their authority revoked, even this cost is not especially large. Under the high scenario, the ten-year cost of closing carriers is $17.2 million, or $1.72 million per year. For the medium scenario, comparable figures are $5.7 million and $570,000, and for the low scenario they are $3.3 million and $330,000.

Table nine displays summary cost data for carriers. The total cost of this NPRM over ten years ranges from $9.5 million to $51 million. 85 percent of cost is borne by Mexican carriers, and the largest single component is from revoking the authority of carriers which fail the follow-up review. Totals may not add because of rounding.

Table 9

Costs of Part 385
Thousands of Dollars

	Low	Medium	High
Safety Review	$489	$853	$2,645
Suspension	$2,710	$4,760	$14,395
Improvement Plan	$1,627	$2,852	$8,697
Follow-up Review	$44	$77	$235
Closure	$3,252	$5,714	$17,244
Total Carrier	$8,121	$14,256	$43,215
Govt Cost	$1,444	$2,523	$7,791
Total Cost	$9,565	$16,780	$51,006
Disc Total Cost	$7,807	$14,068	$38,089

Table 10 summarizes cost data from tables four and nine, and it shows the total cost of the three NPRMs for each of the three scenarios. The screening process and the filing fee account for the vast majority of the total costs of these proposals.

Table 10

Ten Year Cost of NPRM,
Millions of Dollars

	Low	Medium	High
Carrier Cost	$9.7	$16.8	$54.0
Govt Cost (Mex & US)	$1.6	$2.8	$8.5
Total Cost	$11.3	$19.6	$62.6
Disc Total Cost	$9.3	$16.5	$46.8

Benefits

It is harder to estimate the benefits from these proposals than the costs. The Agency believes these proposals will improve the overall safety of Mexican carriers operating in the United States, and thereby reduce the number of crashes they are involved in. However, calculating the number of crashes avoided because of these proposals is necessarily speculative, partly because of the absence of reliable information on Mexican carriers. Indeed, one of the primary goals of these proposals is to allow the FMCSA to gather complete, reliable, and timely data on Mexican carriers.

The preferred analysis method would be to determine the number of Mexican trucks currently operating in the United States, and the number of crashes these vehicles are involved in. This would allow us to calculate the rate of crashes per Mexican truck. Using the number of new carriers anticipated and the average number of trucks per carrier, we could then forecast the baseline number of Mexican truck-involved crashes.

This would represent the number of crashes involving Mexican trucks in the absence of these proposals. We could then perform similar calculations on US trucks to determine the crash rate per US truck. Multiplying the US rate by the forecast number of Mexican trucks would yield the maximum likely benefit of the proposals, that is, the number of crashes that would be deterred if Mexican trucks had the same crash rate as US trucks. This would be the maximum benefit, since the best that can be hoped for from these proposals is that they would lower the Mexican truck crash rate to the US level.

Unfortunately, existing data is not sufficient to allow us to make these calculations. The FMCSA only knows the number of trucks owned by 4,625 of the 11,787 Mexican carriers operating in the United States, less than 40 percent of the total. With so much missing data, any crash rate estimate would be extremely unreliable. Therefore, any calculation of the benefit of lowering Mexican trucks crash rates to the US level would be extremely uncertain, and most likely fall in the margin of error.

Comparisons are also hindered by the different types of operations characteristic of Mexican and US carriers. Most Mexican carriers currently operating in the United States are engaged in drayage operations, primarily hauling freight short distances over the border, where the freight is then loaded onto long-haul vehicles. By contrast very few US carriers are primarily drayage carriers. A comparison of the crash rates may reflect the different types of operations as much as the impact of operating under different regulatory regimes.

Because of these limitations, the FMCSA used a different, and theoretically less desirable, method of estimating benefits. We used a cost effectiveness approach, whereby we estimated the number of crashes that would have to be deterred in order for the proposals to be cost effective. We invite comments on this analysis, and more specifically on the feasibility of using the method outlined above. We are specifically interested in finding out about additional sources of information on Mexican carriers, or on alternate methods of calculating the benefits of these proposals.

We noted above that Mexican carriers were involved in an average of 228 crashes in the United States annually. This number will presumably increase, as additional Mexican carriers operate in the US and they begin to drive throughout the country. Some of these carriers will, at least initially, have less familiarity with the FMCSRs and the roads on which they are driving. Absent these proposals, the total number of Mexican-CMV involved crashes is likely to increase.

Mexican carriers currently operating are involved in an average of 228 crashes per year. This translates into about 0.0193 crashes per carrier under the high option, 0.024 per year under the medium option, and 0.051 for the low option. Given the anticipated increase in the number of carriers, we would expect these carriers to be involved additional crashes over the next ten years. In the absence of these proposed rules, we estimate that Mexican carriers would be involved in 4,822 crashes in the next ten years (high estimate), 2,486 crashes (medium estimate), or 2,840 crashes (low estimate).

If these proposals were not enacted, it is possible that the number of crashes would grow even faster, since some Mexican carriers with little experience would be operating on unfamiliar U.S. roads. These proposals require Mexican carriers to demonstrate an understanding of the FMCSRs before authority is granted. Without this provision (among others) Mexican carriers operating in the US would have less knowledge of Federal safety regulations, facing a potentially steep learning curve.

Table 11

Breakeven Number and Percent of Crashes Deterred To Make Proposals Cost Effective

	Low		Medium		High	
	Number	Percent	Number	Percent	Number	Percent
Year 1	49	20.1%	96	42.1%	149	54.0%
Year 10	5	1.5%	5	1.8%	60	8.6%
Total	150	5.3%	259	10.4%	827	17.2%

Table 11 shows the number and percent of crashes that the NPRMs must deter to be cost effective. Effectiveness is based on an average truck involved crash cost of $75,637 (Zaloshnja et al.). Since the baseline number of crashes is expected to rise fairly quickly, the breakeven percent of crashes that must be deterred falls equivalently. This can be gleaned from the difference between the breakeven percentages for years 1 and 10. For the high estimate, by the second year, one-third of forecast crashes must be deterred; by the fourth year, one-fourth must be deterred; by the eighth year, one-tenth must be deterred. By the tenth year, the breakeven point falls to 8.6 percent. The rates fall equally rapidly for the other estimates.

As noted above, it is impossible to reliably predict the benefits of these proposals. However, it is reasonable to expect that these proposals will deter enough crashes to be cost effective. Some of these carriers will be either new to the United States or new to the specific States in which they are operating. In addition, some of the Mexican carriers operating in the United States will presumably not be entirely familiar with the FMCSRs, and these carriers may be especially prone to accidents. Requiring applicant Mexican carriers to offer a concrete safety management plan will force them to review the FMCSRs, which in itself may have a salutary safety impact. Of course, revoking the authority of carriers that prove unable to exercise basic safety management controls will also have a beneficial impact on crashes.

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement and Fairness Act, requires federal agencies to analyze the impact of rulemakings on small entities, unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. We do not believe that these proposals meet the threshold values for requiring a RFA analysis, since the anticipated impact is fairly small. Nonetheless, because of the public interest in these proposals, the FMCSA has prepared this RFA analysis.

A RFA analysis must include the following elements:

1) A description of the reasons why action by the agency is being considered;
2) A succinct statement of the objectives of, the legal basis for, the proposed rule;
3) A description of, and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;
4) A description of the proposed reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and
5) An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.

Each initial RFA shall also contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives such as –

1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
2) The clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
3) The use of performance rather than design standards; and
4) An exemption from coverage of the rule, or any part thereof, for small entities.

The following sections contain the FMCSA's RFA analysis.

The FMCSA is considering these actions because of the imminent opening of the border to Mexican CMVs. As described above, a NAFTA dispute resolution tribunal recently ruled that the United States violated NAFTA by failing to allow Mexican vehicles greater access to the United States. The United States and Mexican governments are currently negotiating what steps to take next. Given the tribunal's ruling, it appears likely that Mexican trucks and buses will gain increased access to the United States.

The United States does not currently have in place a system to ensure the safety of Mexican carriers operating in the US. Mexican carriers are subject to the same safety

regulations as domestic carriers. However, FMCSA's enforcement of the FMCSRs has become increasingly data dependent in the last several years. Several programs have been put in place to continually analyze crash rates, OOS rates, compliance review records, and other data sources to allow the agency to focus on high-risk carriers. This strategy is only effective if the Agency has adequate data on carriers' size, operations, and history. We do not currently have this type of information on Mexican carriers. Mexican carriers operating in the United States do not have to provide the agency with the sort of detailed operational information required from domestic carriers. Because of their limited range of operations, we do not have abundant information on their safety record, OOS rates, or other overall safety. Thus, a key component of these proposals is the requirement that Mexican carriers operating in the US must complete a MCS-150 form, and must update their OP-1(MX) or OP-2 forms when their situation changes. This will allow the FMCSA to better monitor these carriers, and to quickly determine whether their safety or OOS record changes.

Another goal of the proposals is to establish a framework for notifying Mexican carriers of potential safety problems, and describing the process the Agency proposes to use to resolve these problems.

The objectives of these proposals are to enhance the safety of Mexican carriers operating in the United States. The proposals describe what additional information Mexican carriers will have to submit, and outline the procedure for dealing with possible safety problems.

Under 49 USC 13902, all carriers registered by the agency must be fit, willing and able to comply with our safety regulations. Safety fitness is a condition of all registrations issued by the agency. The safety screen, combined with the safety certifications and other information to be submitted in the OP-1MX and OP-2 applications, are means of ensuring that: (1) Mexican applicants are sufficiently knowledgeable about safety requirements before commencing operations (a prerequisite to being able to comply); and (2) their actual operations in the U.S. are conducted in accordance with their application certifications and the conditions of their registrations.

These proposals will primarily affect Mexican based small motor carriers who wish to operate in the United States. The amount of information these carriers will have to supply to the FMCSA has been increased, and we estimate that they will spend two additional hours gathering data for the OP-1(MX) and OP-2 application forms. Mexican carriers will also have to undergo safety reviews. We presented three growth scenarios in the regulatory evaluation: a high option, with just shy of 15,000 Mexican carriers in the first year and 2,500 in following years; a medium growth scenario, with 10,000 applicants in the first year and 200 per year thereafter; and a low growth scenario, with 5,000 per year in the first year and 200 annually in later years.

A review of the MCMIS census file reveals that the vast majority of Mexican carriers are small. For Mexican carriers with any vehicles, the mean number of CMVs was 5.1. That mean was pulled up by a small number of large carriers. 75 percent of Mexican carriers had three or fewer vehicles, and the 95th percentile carrier had only 15 trucks or buses.

These proposals should not have any impact on small US based motor carriers.

The regulatory evaluation contains a description of the recordkeeping and reporting requirements of these proposals. Applicants for both the OP-1(MX) and OP-2 will also have to submit the MCS-150 (census form) and the BOC-3 (designation of agent for service of process form). In addition, Mexican carriers will have to notify the FMCSA of any changes to certain information.

The MCS-150 is approximately two pages long. In addition to requiring basic identifying information, it requires that carriers state the type of operation they run, the number of vehicles and drivers they use, and the types of cargo they haul. The BOC-3 merely requires the name, address and other information for a domestic agent to be contacted if the FMCS needs contact the motor carrier. The proposals also include other modest changes in the OP-1(MX) and OP-2 forms.

None of these forms require any special expertise to complete. Any individual with knowledge about the operations of a carrier should be able to fill out these forms.

The FMCSA is not aware of any other rules which duplicate, overlap with, or conflict with these proposals.

The FMCSA did not establish any different requirements or timetables for small entities. As noted above, we do not believe these requirements are onerous, with many carriers only required to spend two extra hours to complete the relevant forms. The Part 385 proposal would not achieve its purposes if small entities were exempt. In order to ensure the safety of Mexican carriers, the proposal must have a consistent procedure for addressing safety problems. Exempting small motor carriers (which, as was noted above, are the vast majority or Mexican carriers operating in the U.S.) would defeat the purpose of these proposals. It should be noted in passing that small domestic carriers appear to have higher crash and OOS rates than their larger counterparts. If the same situation holds for Mexican carriers, the justification for exempting them from these proposals would be even weaker.

The FMCSA did not consolidate or simplify the compliance and reporting requirements for small carriers. Small US carriers already have to comply with the paperwork requirements in Part 365. There is no evidence that domestic carriers find these provisions confusing or particularly burdensome. Apropos the Part 385 provisions, we believe the requirements are fairly straightforward, and it would not be possible to simplify them. A simplification of any substance would make the proposal ineffectual. Given the compelling interest in guaranteeing the safety of

Mexican carriers operating in the United States, and the fact that the majority of these carriers are small entities, no special changes were made.

The Part 385 requirements include performance standards. Mexican carriers will only need to complete a safety improvement plan and face a follow-up review if their performance demonstrates that they are not operating safely, either through a high OOS rate or other problems.

As explained above, the FMCSA can not exempt small carriers from these proposals without seriously diminishing the Agency's ability to ensure the safe operations of Mexican carriers. The majority of Mexican carriers operating in the US are small; exempting them would have the same impact as not issuing these proposals.

Appendix
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